

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, JR.,

Plaintiff,

vs.

HORN, et al.,

Defendants.

**1:23-cv-00086-JLT-GSA-PC**

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITHOUT PREJUDICE, FOR  
PLAINTIFF'S FAILURE TO COMPLY  
WITH COURT ORDER**

**OBJECTIONS DUE ON OR BEFORE JUNE  
9, 2023**

**I. BACKGROUND**

Richard Jose Dupree, Jr. ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. On March 31, 2023, the Court issued an order requiring Plaintiff to pay the \$420.00 filing fee in full for this action within thirty days. (ECF No. 9.) The thirty-day time period has elapsed and Plaintiff has not paid the filing fee or otherwise responded to the order.

**II. FAILURE TO COMPLY WITH COURT'S ORDER**

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the

1 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,  
2 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 “The public’s interest in expeditious resolution of litigation always favors dismissal,” id.  
4 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action  
5 has been pending since January 11, 2023. Plaintiff’s failure to respond to the Court’s order may  
6 reflect Plaintiff’s disinterest in prosecuting this case or his inability to pay the filing fee. In either  
7 case, the Court cannot continue to expend its scarce resources assisting a litigant who will not or  
8 cannot resolve the payment of the filing fee for his lawsuit. Thus, both the first and second  
9 factors weigh in favor of dismissal.

10 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
11 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently  
12 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it  
13 is Plaintiff’s failure to pay the filing fee for his case that is causing delay. Therefore, the third  
14 factor weighs in favor of dismissal.

15 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
16 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
17 Court from further unnecessary expenditure of its scarce resources. Plaintiff is a state prisoner  
18 proceeding *pro se* with this action, making monetary sanctions of little use, and given the early  
19 stage of these proceedings, the preclusion of evidence or witnesses is not available. However,  
20 inasmuch as the dismissal being considered in this case is without prejudice, the Court is stopping  
21 short of issuing the harshest possible sanction of dismissal with prejudice.

22 Finally, because public policy favors disposition on the merits, this factor will always  
23 weigh against dismissal. Id. at 643.

### 24 **III. RECOMMENDATIONS AND CONCLUSION**

25 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based  
26 on Plaintiff’s failure to obey the court’s order of March 31, 2023.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **On or before**

1 **June 9, 2023**, Plaintiff may file written objections with the court. Such a document should be  
2 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is  
3 advised that failure to file objections within the specified time may result in the waiver of rights  
4 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,  
5 923 F.2d 1391, 1394 (9th Cir. 1991)).

6  
7 IT IS SO ORDERED.

8 Dated: **May 19, 2023**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE